

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Joint Petition for Approval
of Indirect Transfer of Control of Qwest
Operating Companies to CenturyLink

FIRST PREHEARING ORDER

TO: All Persons on the Attached Service List

This matter came on for a prehearing conference before Administrative Law Judge Barbara L. Neilson on July 7, 2010, at the Public Utilities Commission, 350 Metro Square Building, 121 Seventh Place East, St. Paul, Minnesota.

Michael J. Ahern, Dorsey & Whitney, LLP, and Susan S. Masterton, CenturyLink, appeared on behalf of CenturyLink.

Jason D. Topp, Qwest Corporation Law Department, appeared on behalf of Qwest.

Dan Lipschultz, Moss & Barnett, P.A., appeared on behalf of McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services; OrbitCom, Inc.; TDS Metrocom; POPP.com, Inc.; tw telecom of minnesota, llc; and DIECA Communications, Inc., d/b/a Covad Communications Company (collectively "CLEC Coalition").

Gregory Merz, Gray, Plant, Mooty, Mooty & Bennett, P.A., appeared on behalf of Integra Telecom of Minnesota, Inc. and Eschelon Telecom of Minnesota, Inc. (collectively "Integra"); Velocity Telephone, Inc.; Level 3 Communications; and Charter Fiberlink CCO, LLC. K.C. Halm, Davis Wright Tremaine LLP, also participated by telephone on behalf of Charter Fiberlink CCO, LLC.

Mark J. Ayotte, Briggs & Morgan, P.A., appeared on behalf of Sprint Communications Company, L.P. d/b/a Sprint, Sprint Spectrum, L.P. d/b/a Sprint PCS, Nextel West Corp. d/b/a Nextel, and NPCR, Inc. d/b/a Nextel Partners ("Sprint"); T-Mobile Central, LLC ("T-Mobile"); and Cbeyond Communications, LLC.

Larry D. Espel, Greene Espel, appeared on behalf of MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services and MCI Communications Services, Inc. d/b/a Verizon Business Services ("Verizon").

Cristina Parra Herrera, Gregg M. Corwin & Associate Law Office, P.C., appeared on behalf of the Communication Workers of America.

Julia E. Anderson, Assistant Attorney General, and Diane Wells, Commerce Department, appeared on behalf of the Minnesota Department of Commerce, Office of Energy Security (OES).

Marc Fournier and Kevin O'Grady appeared for the staff of the Minnesota Public Utilities Commission.

Based upon the record and the discussion among the participants at the prehearing conference, the Administrative Law Judge makes the following:

ORDER

Motion for Admission Pro Hac Vice

1. Prior to the prehearing conference, a Motion was filed in this matter by Cristina Parra Herrera for Pro Hac Vice Admission of Scott J. Rubin, an attorney admitted to practice in Pennsylvania and New York. Upon inquiry at the prehearing conference, there was no objection to the Motion, and it was GRANTED.

Parties, Intervention, and Public Participation

2. The parties to this matter, as named in the Commission's Notice and Order for Hearing issued on June 15, 2010, are Qwest, CenturyLink, the Department of Commerce, Integra Telecom of Minnesota, Inc, and Velocity Telephone, Inc. Prior to the prehearing conference, Petitions to Intervene were filed by the Communication Workers of America; Cbeyond Communications; T-Mobile; Sprint Communications; Verizon; Charter Fiberlink CCO; 360networks (USA) inc.; McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC Business Services; OrbitCom, Inc.; TDS Metrocom; POPP.com, Inc.; tw telecom of minnesota, llc; and DIECA Communications, Inc., d/b/a Covad Communications Company. Upon inquiry at the prehearing conference, there were no objections to those Petitions. Accordingly, the Petitions were GRANTED at the Prehearing Conference and the Petitioners were admitted to this proceeding as full parties. Subsequently, on July 15, 2010, Verizon filed a Withdrawal and Dismissal of its intervention and asked that it be removed from the service list in this docket. Verizon therefore is no longer a party to this proceeding. Verizon will be removed from the service list after this Order is served.

3. Other persons who wish to intervene as parties in this proceeding must file a Petition to Intervene that complies with Minn. R. 1400.6200 with the Administrative Law Judge by **July 29, 2010**, along with a Notice of Appearance. Petitioners shall provide an e-mail address on the Petition or Notice of Appearance. Copies of the Petition to Intervene and the Notice of Appearance must be served upon all existing parties and the Commission. Objections to such a petition must be filed within **seven days** of the service of the petition. Any person who is not affiliated with a party or a participant will be removed from the service list after July 29, 2010.

4. Members of the public need not become parties to participate in this matter. Members of the public may file comments with the Commission by mail, by telephone, or by using the interactive “comment” feature on the Commission’s website, which is located at www.puc.state.mn.us/PUC/index.html. If time permits, public participation may be allowed by the Administrative Law Judge during the evidentiary hearing pursuant to Minn. Rules parts 1400.6200, subp. 5, and 1400.7150. Any person who is permitted to participate in the hearing may be questioned by the parties and the Administrative Law Judge.

5. Notice of the proposed merger and opportunity to comment on it shall be given to the Minnesota customers of Qwest and CenturyLink as set forth in the Commission's Notice and Order for Hearing.

6. Any person who is allowed to intervene after the date of this Order shall be bound by the terms of this Order.

Issues

7. As framed in the Notice and Order for Hearing, the ultimate issue to be addressed in this case is whether the proposed merger is in the public interest under Minn. Stat. § 237.23 and 237.74, subd. 12. That issue includes the following three issues:

- Whether the post-merger company would have the financial, technical, and managerial resources to enable the Qwest and CenturyLink Operating Companies to continue providing reliable, quality telecommunications services in Minnesota;
- What impact the transaction would have on Minnesota customers and on competition in the local telecommunications market; and
- What impact the transaction would have on Commission authority.

Schedule

8. After discussion of several competing proposals, the following schedule is adopted:

Event or Document	Event Date or Due Date
Joint Petitioners’ Direct Testimony	June 14, 2010
Deadline for Petitions to Intervene	July 29, 2010
Intervenors’ Direct Testimony	August 19, 2010
Rebuttal Testimony (All Parties)	September 13, 2010
Surrebuttal Testimony (All Parties)	September 27, 2010

Prehearing Conference (3:30 p.m., PUC)	September 28, 2010 ¹
Evidentiary Hearings (9:30 a.m., PUC)	October 5 – 7, 2010
Initial Briefs	October 21, 2010
Reply Briefs	October 28, 2010
ALJ Report	November 30, 2010
Exceptions	December 8, 2010
Replies to Exceptions	December 15, 2010

Settlement

9. In accordance with the Notice and Order for Hearing, any settlement reached between any of the parties in this case shall be transparent and filed as part of the case record.

Discovery

10. The Protective Order issued by the Minnesota Public Utilities Commission on June 15, 2010, shall govern the disclosure of documents and information during the course of this proceeding and protect Trade Secret Information and Highly Sensitive Trade Secret Information.

11. A party may serve requests for information on any other party. All requests for information shall be made in writing by e-mail, and the requesting party shall follow the e-mail with a copy of the request sent by regular U.S. mail or other delivery service to all parties. **Information requests shall not be eFiled and shall not be sent to the Administrative Law Judge or the Court Reporter.** To the extent that a request includes material designated as Trade Secret or Nonpublic under the Minnesota Government Data Practices Act, Minn. Stat. Chap. 13, a request shall only be between the requesting party and responding party and shall not be e-mailed.² Requests shall be sent to the person(s) designated to receive data requests by the party from whom the information is sought. Any request received by e-mail or other means after 4:30 p.m. on a business day, on a weekend day, or on a Minnesota state holiday is considered received on the next business day.

¹ Please note that there has been an adjustment in the time and date of this conference.

² The parties may modify the provision precluding e-mailing of requests or responses containing Trade Secret or Nonpublic Data by agreement.

12. The party responding to the request shall provide the requested information to the requesting party within eight business days of receipt of the information request. A business day does not include a weekend day or a Minnesota state holiday. In accordance with Minn. R. 1400.6100, subp. 1, the day that the information request is received is not counted in the eight-day period. If the request is received after 4:30 p.m. on a business day, the following business day is also not counted in the calculation of the eight-day response period. **Responses to information requests shall NOT be eFiled and shall not be sent to the Administrative Law Judge or the Court Reporter.**

13. Public responses to information requests shall be submitted by e-mail, and the responding party shall follow the e-mail with a copy of the response sent by regular U.S. mail or other delivery service, unless the receiving party agrees to accept responses by e-mail delivery only. Copies of responses to information requests shall be provided electronically to every party for whom an email address has been noted on the service list. Any party may opt out of receiving copies of responses to information requests by eFiling a letter to that effect addressed to the Administrative Law Judge. **Responses to information requests shall NOT be eFiled and shall not be sent to the Administrative Law Judge or the Court Reporter.** If a response includes material designated as Trade Secret or Nonpublic, the nonpublic response shall not be e-mailed. Any response received after 4:30 p.m. on a business day is considered to be received the following business day.

14. If the responding party is unable to send the response by e-mail because of the volume or nature of information included in a response, the responding party shall send the response by facsimile, U.S. mail, or delivery so that the requesting party receives the entire response including any material designated as Trade Secret or Nonpublic by the date due. Responding parties may utilize optical data storage (DVDs or CDs) to convey large volumes of data. If the response is sent by facsimile, the responding party shall follow the facsimile with a copy of the response sent by regular U.S. mail or other delivery service. There shall be a continuing obligation to update and supplement information responses with any responsive material that may subsequently be discovered or acquired by the responding party.

15. As noted in Paragraph 12 above, copies of public responses to information requests shall be provided electronically to every party for whom an email address has been noted on the service list, unless such parties has opted out of receiving such copies. A party that wishes to receive copies of requests or responses containing material designated as Trade Secret or Nonpublic information must comply with the terms of the Protective Order in this matter before receiving the information.

16. If the responsive information cannot be supplied within eight business days, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and attempt to work out a schedule of compliance with the requesting party.

17. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon motion of a party. Such motions may be brought informally by e-mail. Notice of such motions will be made by e-mail. Informal motions to address discovery requests and responses will usually be heard by telephone conference.

Prefiled Testimony

18. Prefiled testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier.

19. A paper copy of prefiled testimony being offered for admission into the record at the hearing shall be provided for use at the hearing. The offering party will identify the document as having been eFiled (with the unique eFile identifying number of the document). The Administrative Law Judge will assign a hearing exhibit number to the document at the time that it is offered for admission at the hearing.

20. Corrections to any prefiled testimony shall be identified and marked on the paper copy of the exhibit. Those changes will be eFiled as soon as practical after the hearing. A hearing exhibit list will be prepared that identifies each exhibit in the hearing record, with its hearing exhibit number and unique eFile identifying number. The eFiled documents constitute the official record of the proceeding, along with any supplemental record data that cannot be eFiled. Any such supplemental record data will be identified by the Administrative Law Judge as included in the official record.

21. Prefiled testimony that is not offered into the record, or stricken portions of prefiled testimony that is offered, shall be considered withdrawn and no witness shall be cross-examined concerning the withdrawn testimony. Any new affirmative matter that is not offered in reply to another party's direct case will not be allowed in rebuttal testimony and exhibits. Except for good cause shown, all revisions or corrections to any prefiled testimony shall be in writing and served upon the Administrative Law Judge and the parties no later than three days prior to the commencement of the evidentiary hearing.

Witnesses

22. Subject to change by agreement of the parties or further order of the Administrative Law Judge, the order of testimony shall be: Joint Petitioners; Integra Telecom of Minnesota; Velocity Telephone; Charter Fiberlink; the CLEC Coalition; 360networks; T-Mobile; Sprint Communications; Cbeyond Communications; Verizon; other intervenors in the order of intervention; the Communication Workers of America; and OES. Questioning of the witnesses shall proceed in the same order, followed by Commission staff and the Administrative Law Judge.

23. In the event that a witness must be scheduled for a day certain to offer testimony, the sponsoring party should attempt to reach agreement with the other parties and then submit a request to the Administrative Law Judge.³

24. Witnesses will be allowed ten minutes in which to summarize their prefiled testimony. In order for a witness to include new information in his or her summary, the party offering that witness' testimony must obtain the prior approval of the Administrative Law Judge upon a motion with a showing of good cause for not having addressed that information in prefiled testimony.

25. Parties shall examine and cross-examine witnesses through their attorneys if they are represented by counsel. Any party not represented by counsel may examine and cross-examine each witness through any one representative chosen by the party.

26. Except for good cause shown, objections by any party relating to the qualifications of a witness or the admissibility of any portion of the prefiled testimony of a witness shall be considered waived unless the objecting party states its objection by motion made to the Administrative Law Judges, and serves a copy of such objections on the parties, no later than three days before the hearing begins. If an objection is made by a party, the party shall be permitted to lay further foundation for the objection through cross-examination of the witness. Any prefiled testimony that is not objected to shall be admitted during the evidentiary hearings without the necessity of laying foundation for the testimony.

Procedure

27. The rules of the Office of Administrative Hearings govern the conduct of the hearings, and the Professionalism Aspirations adopted by the Minnesota Supreme Court will be observed.

Filing of Documents (Excluding Information Requests and Responses)

28. The parties have agreed to file all documents, including prefiled testimony, using the eFiling system of the Public Utilities Commission, the Department and the Office of Administrative Hearings. Such eFiling constitutes service on those offices and upon any other party that has agreed to accept eFiling as service.

29. The original document shall be filed using the eFiling system wherever feasible, in accordance with Minn. Stat. § 216.17, subd. 3, and the Commission's standards. In any instance where the eFiling system cannot be used, the original document shall be filed by delivery or mail with the Administrative Law Judge.

30. The effective date of filing shall be the date the document is eFiled, mailed by U.S. Mail, or delivered to the Administrative Law Judge. Parties using the eFiling system should retain the unique document identifier as proof of filing through that

³ The parties have already reached agreement to take the testimony of Jeffrey Pollock on June 9, 2009.

system. Proof of service to the service list in this proceeding shall be filed with each document or within three business days thereafter.

31. With the exception of Trade Secret and other Nonpublic Data, copies of all documents that are filed shall be served by e-mail according to the attached official service list by 4:00 p.m., and a paper copy shall also be mailed or delivered that day to the persons so indicated on the official service list. The list will be revised as necessary by the Office of Administrative Hearings.

32. Paper copies of Trade Secret and other Nonpublic Data shall be transmitted by U.S. Mail or delivery to the parties who have signed the appropriate exhibit to the Protective Order. Such documents may be served on the next business day following the filing of the public version.

33. After the Administrative Law Judge's Report is issued, the parties shall file the original of all documents with the Executive Secretary of the Commission in accordance with the Commission's standards.

34. Where Trade Secret or Nonpublic Data is filed with the Administrative Law Judge, that filing shall be prepared and marked in accordance with the Public Utilities Commission's September 1, 1999, Revised Procedures for Handling Trade Secret and Privileged Data. The procedures are available from the Commission website and may be viewed at www.puc.state.mn.us/docs/tradsecret.pdf. Access to nonpublic data shall be governed by the Protective Order that has been issued in this proceeding.

Court Reporter

35. The Office of Administrative Hearings will arrange to have a court reporter present at the hearing. Parties must make arrangements with the Court Reporter to obtain a copy of the transcript. The Court Reporter should receive copies of all filings that address the schedule in this matter, and copies of the prefiled testimony. The Information Requests and Responses should not be sent to the Court Reporter.

Request for Accommodation

36. No person has requested accommodation for a disability or appointment of an interpreter. The Office of Administrative Hearings shall be notified promptly if either an accommodation or interpreter is needed.

Subpoenas

37. Requests for subpoenas for the attendance of witnesses or the production of documents shall be made in writing to the Administrative Law Judge pursuant to Minn. R. 1400.7000. A copy of the subpoena request shall be served on the other parties. A subpoena request form is available at www.oah.state.mn.us.

Modification of Order

38. The terms of this Order may be modified, for good cause shown, on motion of any party or at the discretion of the Administrative Law Judge.

Dated: July 16, 2010

s/Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge